

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Regulations Pertaining to 39 U.S.C. § 601

Docket No. RM2020-4

PUBLIC REPRESENTATIVE COMMENTS

(January 3, 2022)

I. INTRODUCTION

On November 24, 2021, the Commission issued a notice of proposed rulemaking in this docket proposing regulations pertaining to 39 U.S.C. 601.¹ Section 601 of title 39 of the U.S. Code prescribes the requirements to be met when letters may be carried out of the mail, or when the letter monopoly is not applied to a mailpiece.

In 2006, the PAEA amended Section 601 of title 39.² It prescribed new price and weight limits for the letter monopoly. Prior to the PAEA, the Postal Service appeared to have authority to suspend operation of the postal monopoly and to enforce provisions of the criminal code that defined the postal monopoly. Section 601 of the PAEA repealed the Postal Service's authority to administratively suspend the operation of the postal monopoly and it repealed the Postal Service's authority to implement provisions of the criminal code defining the scope of the monopoly. The PAEA also grandfathered the continuation of private activities permitted by Postal Service regulations for the carriage of mailpieces out of the mail. 39 U.S.C. 601(b)(3). Order No. 6047 at 2-3. Most relevant here, the PAEA repealed the Postal Service's authority to adopt any regulations creating exceptions to, or defining the scope of, the postal monopoly. See 39 U.S.C. 401(2), 404(a)(1), and 601. Rather, Section 601(c) of the

¹ Notice of Proposed Rulemaking for Regulations Pertaining to Section 601, November 24, 2021 (Order No. 6047). Comments on the proposed regulations are due no later than 30 days from the date of the publication in the *Federal Register* of the notice which was on December 1, 2021. See 86 *Fed. Reg.* 68202. Because the 30th day falls on a holiday before the weekend, comments are due January 3, 2022.

² Postal Accountability and Enhancement Act, Pub. L. 109-435, 120 Stat. 3198 (2006).

PAEA authorized this Commission to issue “[a]ny regulations necessary to carry out this section [601].” Order No. 5930 at 4. With these proceedings, the Commission intends to determine and implement appropriate regulations pursuant to Section 601 of the PAEA.

II. HISTORY OF THESE PROCEEDINGS

This Docket No. RM2020-4, commenced on February 7, 2020, when the Commission issued an advance notice of proposed rulemaking in Order No 5422 seeking public comment on 14 issues presented by the Commission about potential legislation and regulations the Commission might propose or implement to carry out the requirements of PAEA Section 601.³ Several comments were filed by the Public Representative and others responsive to the several questions presented by the Commission in the ANOPR.

Subsequently, on July 2, 2021, by Order No. 5930,⁴ the Commission initiated a new proceeding in Docket No. PI2021-2, stating that because of the length of time since the comments were received in Docket No. RM2020-4, and the breadth of topics covered in the previous comments, the Commission would like updated comments. Concurrently, on July 2, 2021, with the issuance of Order No. 5930 initiating the new docket to obtain comments, the Commission ordered Docket No. RM2020-4 held in abeyance “until after the public inquiry proceeding is completed.”⁵

The comments requested in Docket No. PI2021-2 were to focus the Commission’s “inquiry on the statutory exemptions in Sections 601(a) and (b), and what regulations under Section 601(c), if any, are needed to carry out those exemptions.” Order No. 5930 at 6. That inquiry was limited to “two issues: (1) whether Postal Service regulations administering current Sections 601(a), 601(b)(1), and 601(b)(2) should be adopted by the Commission; and (2) what private carrier services are within

³ Advance Notice of Proposed Rulemaking to Consider Regulations to Carry Out the Statutory Requirements of 39 U.S.C. 601, February 7, 2020, Order No. 5422 (ANOPR).

⁴ Notice and Order Providing an Opportunity to Comment on Regulations Pertaining to 39 U.S.C. § 601, July 2, 2021 (Order No. 5930).

⁵ Docket No. RM2020-4, Order Holding Rulemaking in Abeyance, July 2, 2021 (Order No. 5929) at 2.

the scope of Section 601(b)(3).” *Id.* at 6. Pursuant to Order No. 5930, on August 26, 2021, the Public Representative along with others again filed comments pertaining to Section 601.⁶

On November 24, 2021, by Order No. 6046, the Commission closed Docket No. PI2020-1,⁷ reopened this docket and, based on comments previously received, proposed new regulations to carry out Section 601. See Order No. 6047 at 5, n.13; 16. The Commission has requested comments on the proposed regulations.

III. COMMENTS

The Commission’s proposed regulations generally resolve the issues for handling Section 601 by simply adopting the Postal Service’s regulations by inserting into its own regulations citations to the relevant Postal Service regulations. Order No. 6047 at 21, proposing 39 CFR 3065.1.⁸ The Commission’s regulations would include most, but not all, of the Postal Service’s current regulations related to the letter monopoly.

The Commission’s proposed rules also include a new section in the Commission’s regulations stating that the Postal Service may not issue certain new regulations. 39 CFR 3065.2. Order No. 6047 at 22. The Postal Service may not issue new regulations or guidance or enter into agreements purporting to suspend or otherwise define the scope of the letter monopoly. 39 CFR 3065.2(a). Nor may the Postal Service promulgate any new regulations or issue guidance purporting to interpret section 601. 39 CFR 3065(b). Last, the Commission has the sole authority to issue new regulations to carry out Section 601. 39 CFR 3065.2(c).

The proposed rules also adopt procedures to obtain clarification or interpretation of both the new Commission rules and 39 U.S.C. 601. The Commission on its own motion may initiate a rulemaking proceeding. 39 CFR 3065.3(a). The Commission may also interpret its regulations or section 601 upon a party’s request to initiate a rulemaking proceeding, 39 CFR 3065.3(b)(1), or upon a party’s request for an advisory

⁶ See Order No. 6047 at 11, n. 15.

⁷ Docket No. PI2021-2, Order Closing Docket, November 24, 2021 (Order No. 6046) at 2.

⁸ The sections of the Postal Service regulations to be adopted by the Commission as its own are 39 CFR 310.1, 310.2(b)(1)-(2) and 320.1--320.8. Order No. 6047 at 21.

opinion from the Commission's General Counsel. 39 CFR 3065(b)(2). Order No. 5047 at 22.

The Public Representative does not have any objections or suggestions regarding the proposed rules. It appears that the rules should function as intended if the Postal Service cooperates with the Commission as it has stated that it intends to do in order to insure the rules are clear and that the Postal Service's rules do not conflict with the Commission's rules regarding Section 601.

Earlier comments of the Public Representative addressed a similar but not identical approach as the one chosen by the Commission. The possibility of adopting the relevant Postal Service regulations from Chapter I of title 39 of the CFR into the Commission's portion of title 39 (Chapter III) was considered. However, it was assumed the Commission would reprint the whole of those relevant Postal Service regulations into its own sections of the regulations. That possible approach concerned the Public Representative for two reasons. First, errors might be made in deciding exactly which rules or parts of rules would be copied in the Commission's rules such that there could be inadvertent omissions or technical errors in failing to pick up cross references within other sections of the Postal Service's rules that might not be evident. That solution had the further disadvantage of resulting in two sets of regulations purporting to cover the same ground, one subject only to Postal Service modifications and the other subject only to Commission modifications. Without further restrictions, the Commission could not control final changes the Postal Service might make to its own rules that could conflict with the Commission's adopted language.⁹

The Public Representative was concerned that without the fullest cooperation and coordination by and with the Postal Service in agreement with the Commission regarding the Postal Service's loss of its prior administrative authority and the Commission's new authority, two sets of regulations that might be changed independently by either authority could create, sooner or later, some unnecessary conflicts between the agencies rules and/or confusion by the public. That concern has been ameliorated by the assurances in the Postal Service's comments that it will work

⁹ Docket No. PI2021-1, Public Representative Comments at 8.

with the Commission to modify its rules as necessary to recognize the Commission's new authority in Section 601.¹⁰ Potential conflicts can also be avoided by the additional proposed new section 3065.2 of the Commission's rules prohibiting the Postal Service from promulgating new regulations, guidance or agreements "purporting to suspend or otherwise define the scope of the letter monopoly,"¹¹

Procedures for internal handling of interpretive requests directed to the Commission's General Counsel are not considered in Order No. 6047. The Commission's order does not indicate the internal administrative procedures for handling requests to the General Counsel for interpretation of administrative or rules matters. The Postal Service noted a substantial slowdown in requests for advisory opinions before or since the PAEA. It also pointed out that since the PAEA's enactment, no party has requested new rules to clarify any aspect of Section 601.¹² It therefore appears unnecessary to consider or establish internal procedures for inquiries directed to the Commission's General Counsel at this time. If and when such inquiries materialize, the internal administrative process can be determined based on the circumstances and requirements for review of the inquiry at the time.

For the above reasons, the Public Representative supports the issuance of the proposed rules and expects that on the basis of the Postal Service's previous comments, it will work administratively to coordinate its rules with the Commission now and in the future as necessary to avoid conflicts between their respective rules.

IV. CONCLUSION

The Public Representative submits the above comments for the Commission's consideration.

¹⁰ The Postal Service understands that certain clarifications and updates of its regulations require updating and that it will consult with the Commission on draft rulemaking materials prior to issuing revisions. Order No. 6047 at 14.

¹¹ Importantly, the proposed rules prohibit the Postal Service from suspending aspects of the letter monopoly. That will serve to nullify the Postal Service's regulation at 39 CFR 3010.2(c) that might, if Section 601 does not prohibit such action in any event, continue to suggest the Postal Service could suspend exceptions to the letter monopoly.

¹² Order No. 6047 at 10.

Respectfully submitted,

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